Supreme Court, U.S.
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Case Number _____

Supreme Court of the United States

October Term, 1997

Patricia S. Martin,
Petitioner, pro se

vs.

Hugh Lamar, Dean, Computer Technologies; Harry Taylor, Chairman, Student Disciplinary Committee; Dr. Charles Temple, President, State Technical Institute at Memphis,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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Petition for Writ of Certiorari

Patricia S. Martin,
Petitioner, pro se
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Statement of Grounds of Jurisdiction

The United States District Court for the Western District of Tennessee had original jurisdiction over this matter pursuant to 28 U.S.C. §1331. The United States Court of Appeals for the Sixth Circuit had jurisdiction over Plaintiff's appeal under 28 U.S.C. 1291 and Rule 3 of the Federal Rules of Appellate Procedure. The Sixth Circuit Court entered an ORDER February 2, 1998, affirming the Federal District Court's Orders of summary judgment and dismissal entered May 2, 1995. U. S. Sup Ct. Rule 10, 28 U. S. C. gives the United States Supreme Court jurisdiction on the Writ of Certiori. Petitioner seeks reversal of the U.S. Court of Appeals for the Sixth Circuit's decision filed on February 2, 1998.

To the Chief Justice and Justices of the Supreme Court of the United States of America:

Statement of the Case and Material Proceedings in the Federal and Circuit Court

This case is of public importance or public interest because it concerns constitutional rights to a free public state or federally funded education, and because the Sixth Circuit Court labeled this a disability action totally disregarding the Petitioner's constitutional and due process rights.

Under fee waiver for disabled students through the Tennessee Board of Regents, petitioner, pro se, with twenty years of experience in data processing and in a psychology Ph.D. program, was accepted and attended State Technical Institute at Memphis for the August 1993 to December 1993 semester hoping to gain additional technical skills to facilitate return to work. Appellant received social security disability for a neck injury that occurred December 15, 1990.

On October 26, 1993, Petitioner, pro se, was quietly typing in the computer lab, as stated in deposition by Dean Lamar. Vanderbosh, another student, came in shouting obscenities and causing Petitioner's neck to muscle spasm. Vanderbosh was a bully per Colleen Stanhouse's testimony (Appendix C) and weighed about 300 pounds. Pat Austin the lab tech who testified with Vanderbosche also weighed about 350 pounds. Vanderboshe had been warned by the instructors and security not to bother Martin, petitioner, pro se. Dean Lamar came into the computer lab October 26, 1993, accusing Martin of bothering Vanderboshe. Unable to correct the Dean and in pain from muscle spasms in her neck, Petitioner, pro se, said she was going to turn off her terminal and go to security. Disability certificates were registered with security, and it was the procedure disabled students were supposed to follow. Frightened because the Dean was chasing her, Petitioner, pro se, ran to security.

In violation of State Tech's own student due process rules Martin, petitioner, pro se, was forbidden to attend classes until a disciplinary hearing scheduled for November 8, 1993. No

misconduct was substantiated. The Dean, the instructors, and the lab instructor stated that the Petitioner was not guilty of misconduct. Vanderboshe's testimony even contained obscenities. Vanderboshe's testimony (Appendix D) is the only testimony against the Petitioner, pro se. During the disciplinary hearing she said she couldn't do her class work under fear that she might be arrested. She had been warned by the instructors and security that she could be arrested for harassing the Petitioner, pro se. Later in deposition she testified she thought the petitioner was schizophrenic. Respondents substantiated no misconduct against the petitioner, pro se. Petitioner, pro se, did not receive the result of the disciplinary hearing until January, 1994, making it impossible for the petitioner, pro se, to complete the classes or appeal the decision.

Petitioner, pro se, filed a complaint in Federal District Court believing the strongest case was denial of constitutional and due process rights. Federal District Court dismissed these rights May 2, 1995, in Appendix B, leaving only the Americans with Disabilities Act aspect of the complaint. Without professing the competence of

a lawyer, petitioner, pro se, appealed to the Sixth Circuit Court asking the Sixth Circuit to consider constitutional and due process rights dismissed by the district court.

The Sixth Circuit Court returned:

> Martin brought this action under 42 U.S.C. 1983, under the Americans with Disabilities Act (ADA), 42 U.S.C. 12132 and under the Vocational rehabilitation act of 1973 (Rehabilitation Act), 29 U.S.C. 794. (Appendix A)

totally overlooking the constitutional rights to a free federally funded education and good reputation and Fourteenth amendment rights of due process of the petitioner, pro se.

Arguments

I. Do the actions of the Defendants constitute a denial or interference of the Constitutional Rights of the Petitioner, pro se, to pursue a public education in a state or federally funded institution and to maintain a good reputation of her name?

The Respondents interfered with the Petitioner's Civil Rights under 42 U.S.C. § 1985, 1986, as presented in statement of the case.

Interestingly, Respondent does not set forth what acts Petitioner allegedly engaged in which might be considered misconduct. Respondents did not substantiate anything at all that the Petitioner did wrong. However, the Respondents state that Petitioner posed a threat to other students, disrupting their ability to learn. One student, Vanderboshe, with no particular talents, stated she the Petitioner was crazy, that Martin was talking to something or someone that was not there and telling them to shut up (Vanderbosh Dep. Appendix D).

At the disciplinary hearing Vanderbosche said that Ms. Stockett, instructor, warned her that she could be arrested if she continued harassing Martin, petitioner, pro se, an experienced consultant. Petitioner, pro se, proved without a doubt that she did not constitute a threat to the safety of other students or that she did not engage in disruptive behavior. Petitioner, pro se, is in Who's Who of American Women and Who's who of Women Executives, and is completing a Psychology Ph.D. program.

The Sixth Circuit has reiterated that the Supreme Court developed the separate concept of qualified immunity to apply to most cases involving alleged wrongdoing on the part of public officials." Megenity V. Stenger , 27 F.3d 1120, 1123 (6th Cir.1994). The court holds that Harry Taylor and Hugh Lamar are not entitled to protection of absolute immunity (May 2, 1995 order). It is obvious to the average person that Harry Taylor and Hugh Lamar knew that they were denying the constitutional right to a state federally funded education of the Petitioner, pro se, therefore they are not immune. Respondents accepted the fact that Harry Taylor and Hugh Lamar are not immune. They did not appeal the decision.

The judge never listened to the case. It was dismissed not even presented.

II. Do the actions of the Defendants constitute a denial of the substantive and procedural due process rights of the Petitioner, pro se, secured under the Fourteenth Amendment to the United States Constitution (42 U.S.C. 1983)?

The Fourteenth Amendment prohibits state actors from depriving an individual of life, liberty, or property without due process of the law. (U. S. Const. Amend XIV). The petitioner, pro se, had a property right to attend STIM for the fall semester 1993 attending classes beginning in August of 1993 ending in December 1993 with tuition covered by fee waiver for disabled students through the Tennessee Board of Regents. The petitioner, pro se, also had a liberty interest as a public school student to complete her courses acquiring a few additional technical skills and to maintain a good reputation in her name. The May 2, 1995, order of dismissal, stated the petitioner's property and liberty right.

Plaintiff's opposition to Defendants' motion to dismiss stated that a student is entitled to be free from arbitrary and capricious

decisions regarding her right to continue her studies. (Picozzi v. Sandalow, 623 F. Supp. 1571, 1576 (D.C. Mich 1986) affirmed 827 F.2d 769) "A public university student has a protected interest in continuing his studies." Inherent in this interest is the right to not be arbitrarily dismissed from school. Plaintiff stated in her opposition to dismissal that she had a right to be free from arbitrary and capricious decisions affecting her status as a student.

Defendants' actions constitute a denial of Plaintiff's substantive and procedural due process rights secured under the Fourteenth Amendment to the United States Constitution (42 U.S.C. §1983) and constitute deprivation of Plaintiff's civil rights under the color of State Law in violation of the rights secured to Plaintiff under the Fourteenth Amendment of the United States Constitution, as presented in statement of the case.

A memorandum states Dean Lamar made several attempts to encourage resolution. Lamar testified in his deposition that he did not question the Plaintiff because it was not his role. Plaintiff was never told there were any complaints about her because there weren't any until after the disciplinary hearing.

Respondent claims that Plaintiff declined to appeal. This is incorrect. Plaintiff did not get the opportunity to appeal because, despite diligent efforts to obtain it, Petitioner, pro se, did not receive her notice from STIM in time to file a timely appeal.

In her appeal to the Sixth Circuit Court, Petitioner, pro se, asked the Sixth Circuit Court to consider her constitutional and due process rights, and the Sixth Circuit Court returned Petitioner, pro se, filed a disability action (Appendix A), instead of considering the constitutional and due process rights.

Conclusion

The Court should reverse the Sixth Circuit decision because the Sixth Circuit failed to consider the Petitioner's constitutional right to a free state federally funded education and XIV Amendment due process rights and remand the case to the U.S. District Court for the Western District of Tennessee so the case can be presented to a judge.

Respectfully submitted this 1st day of July, 1998.

Patricia S Martin, pro se

Patricia S. Martin
Petitioner, pro se

Case Number _____

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Appendix

Patricia S. Martin,
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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OH 45202-3988

Patricia J. Elder
(513) 564-7034

Filed: February 2, 1998

Patricia S. Martin

S. Elizabeth Martin

RE: 97-5577
Martin vs. Temple
District Court No. 94-02323

Enclosed is a copy of an Order which was entered today in the above styled case.

Very truly yours,
Leonard Green, Clerk

(Ms.) Patricia J. Elder
Case Manager

Enclosure

cc: Honorable Bernice B. Donald
Mr. Robert R. Di Trolio

No. 97-5577

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PATRICIA S. MARTIN, Plaintiff-Appellant, v. CHARLES TEMPLE, Dr., HUGH LAMAR, Dean, Computer Technologies, HARRY TAYLOR, Chairman, Student Disciplinary Committee; STATE TECHNICAL INSTITUTE OF MEMPHIS, Defendants-Appellees	)	ORDER

Before: JONES, DAUGHTREY, and COLE, Circuit Judges

Patricia S. Martin, proceeding pro se, appeals two district court orders: 1) granting the defendants' motion to dismiss some of Martin's claims, pursuant to Fed. R. Civ. P. 12(b)(6); and 2) granting the defendants' motion for summary judgment on the remaining claims. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon

examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Martin brought this action under 42 U.S.C. § 1983; under the Americans with Disabilities Act (ADA), 42 U.S.C. § 1291 and under the Vocational Rehabilitation Act of 1973 (Rehabilitation Act), 29 U.S.C. § 794. The plaintiff sued the State Technical Institute at Memphis (STIM), the President of STIM in his official capacity, and the Dean and the Chairman of STIM's Disciplinary Committee in their individual capacities, alleging that the defendants illegally expelled her from the school for a year and suspended her from re-enrolling in the school for one year on the basis of a disability. On appeal, Martin preserves her claims surrounding her rights under the Due Process and Equal Protection Clauses, and her claims under the ADA and the Rehabilditation Act; therefore, those claims will be reviewed by this court. *Enertech Elec., Inc. v. Mahoning County Comm'rs,* 85 F. 3d 257, 259 (6th Cir. 1996). Upon de novo review, this court concludes that the district court properly granted the defendants' Rule 12(b)(6) motion to dismiss Martin's due process and equal protection claims against defendants

Taylor and Lamar. *Sistrunk v. City of Strongsville*, 99 F3d 194, 197 (6th Cir. 1996), *cert. Denied*, 117 S. Ct. 2409 (1997).

Martin did not meet her burden of alleging or showing that other students at STIM were treated differently, or that the defendants intentionally discriminated against her because of membership in a protected class. *Purisch v. Tennessee Technological Univ.*, 76 F.3d 1413, 1424 (6th Cir. 1996) (quoting *Henry v. Metropolitan Sewer Dist.*, 922 F.2d 332, 341 (6th Cir. 1990)). Moreover, the action by STIM's Disciplinary Committee was "rationally related" to its legitimate purpose of maintaining a safe environment on STIM's campus, conducive to its objective of teaching and learning. Thus, the defendants' actions and policies can withstand the proper level of scrutiny. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). See also *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). There is no merit to Martin's due process claim, because process is not an end in itself and Martin had no right to demand needless formality prior to STIM's disciplinary hearing when she has not shown that she has a liberty or property interest created by any underlying state statute or school policy. *Olim v.*

Wakinekona, 461, U.S. 238, 250 (1983), *LRL Properties v. Portage Metro Hous. Auth.*, 55 F.3d 1097, 1110 (6th Cir. 1995).

Although there is merit to Martin's argument that the defendants are not protected, under the Eleventh Amendment immunity, from her claims under the ADA and under the Rehabilitation Act, 42 U.S.C. § 12202 (1995); 42 U.S.C. § 200-7(a)(1) (1986), *Duffy v. Riveland*, 98 F.3d 447, 452 (9th Cir. 1996), Martin's claims under those federal statutes are meritless. The district court properly granted summary judgment on these claims because Martin could show no genuine issue as to any material fact and the defendants were entitled to a judgment as a matter of law. Fed R. Civ. P 56(c); *Terry Barr Sales Agency, Inc. v. All-Lock Co.*, 96 F.3d 174, 178 (6th Cir. 1996); *Johnson v. United Postal Ser.*, 64 F.3d 233, 236 (6th Cir. 1995).

The defendants established an absence of evidence to support an essential element to these claims, i.e., that they expelled her from STIM because of a disability. 42 U.S.C. § 12132; 42 U.S.C. § 12182(a); *Rothman v. Emory Univ.*, No. 96-2901, 1997 WL 409420,

at *4(7th Cir. July 23, 1997); *McPherson v. Michigan High Sch. Athletic Ass'n*, 119 F.3d 453, 459-60 (6th Cir. 1997); *Burns v. City of Columbus, Dep't of Pub. Safety*, 91 F.3d 836, 841 (6th Cir. 1996). The defendants presented sufficient evidence to show that the Disciplinary Committee based its decision on information that Martin had interfered with her fellow students' ability to pursue course work and Martin failed to meet her burden of responding with other evidence showing that the defendants' reasons for expelling her from STIM were merely pretextual. *Texas Dep;t of Community Affairs v. Burdine*, 450 U.S. 248, 252-56 (1981); *McDonnell Douglas Corp v. Green*, 411 U.S. 792, 802 03 (1973), *Burns*, 91 F.3d at 844. Thus, Martin failed to show that a genuine issue of fact remained surrounding this element of her claim *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

Likewise, the defendants' documentation showed an absence of evidence to support the necessary element of plaintiff's Rehabilitation Act and ADA claims that she was "otherwise qualified to remain a student at STIM, in light of her misconduct. *Sandison v. Michigan High Sch. Athletic Ass'n*, 64 F.3d 1026, 1034

(6th Cir. 1995), *Jasany v. United States Postal Serv.*, 755 F.2d 1344, 1250 (6th Cir. 1985).

Accordingly, the district court's orders are affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PATRICIA S. MARTIN,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 94-2323-TUA
	)	
HUGH LAMAR, et al.,	)	
	)	
Defendants.	)	

ORDER ON DEFENDANTS' MOTION TO DISMISS

Plaintiff Patricia S. Martin brought this civil rights action against State Technical Institute at Memphis ("STIM"), Hugh Lamar, Dean of Computer Technologies at STIM, Harry Taylor, Assistant Dean and Chairman of the Student Disciplinary Committee at STIM, and Dr. Charles Temple, President of STIM. Presently before that court is the motion of the defendants to dismiss certain claims pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure.

The purpose of a Rule 12 (b) (6) motion is to test the sufficiency of the pleading. Davis H. Elliot Co. v. Carribbean Utilities Co., 513

F.2d 1176, 1182 (6th Cir. 1975). When considering such a motion, the court is required to liberally construe the complaint and take its well-pleaded facts as true. Id. (quoting Conley v. Gibson, 355 U.S. 41, 45-56 (1957)).

FACTS

The complaint sets forth the following facts. Plaintiff enrolled as a disabled student in computer classes at STIM in August 1998. Plaintiff's disability is due to a cervical spine injury sustained in an automobile accident on December 15, 1990. As a result of the injury, plaintiff suffers cervical muscle spasms, which she is unable to control. The muscle spasms mostly occur when plaintiff is placed under stressful situations, such as being subjected to harassment by another person. Plaintiff did not pose a direct threat to the health or safety of others at STIM.

On October 26, 1993, plaintiff was working in the computer lab when a student named Pat Vanderbosh began to harass plaintiff and disrupt plaintiff's work by screaming obscenities and yelling at plaintiff. Plaintiff began to suffer muscle spasms. Vanderbosh thereafter complained to dean Lamar that the plaintiff was engaging in bizarre behavior. Dean Lamar approached plaintiff in a threatening manner and accused her of bothering Vanderbosh. Plaintiff's neck began to throb and she told Dean Lamar she would

turn off her terminal and go to security. Dean Lamar chased the plaintiff from the computer lab to security.

On October 27, 1993, Dean Lamar wrote a memorandum to Judith McCrary, Vice President of Student Services, recommending that plaintiff be expelled from STIM. The memo stated that the plaintiff's "behavior has a perception of being a threat to the safety and welfare of this campus." (Pl.'s Mem. In Opp'n to Defs.' Mot. To Dismiss, Ex. D). Plaintiff alleges that Dean Lamar and other STIM employees prohibited plaintiff from attending classes prior to her hearing, in violation of established disciplinary procedures and before plaintiff was allowed due process; plaintiff further allegest that these actions by Dean Lamar were arbitrary and capricious and based on generalizations and stereotypes.

Plaintiff also states that on November 3, 1993, she returned to campus to solicit witnesses in her behalf, but that security was called "to get" plaintiff, further discriminating against and harassing her.

On November 8, 1993, the Student Disciplinary Committee ("SDC"), chaired by Assistant Dean Harry Taylor, held a

disciplinary hearing to determine whether plaintiff was guilty of misconduct. Plaintiff asserts that the defendants engated in discriminatory and/or arbitrary and capricious disciplinary action against plaintiff by dropping her courses, expelling her for the rest of the school year, and suspending her from re-enrolling in school for one year on the basis of her disability. Plaintiff states that this action was arbitrary and capricious because the testimony of plaintiff's instructors and other students indicated that plaintiff posed no threat to other students. Plaintiff asserts that the vulgar, obscene testimony of student Vanderbosh and the untruthful testimony of Ms. Powell, a secretary at STIM, wer the only evidence used to support the disciplinary action against plaintiff. Plaintiff alleges that Dean Lamar, Assistant Dean Taylor and other members of the SDC agreed to suspend and expel the plaintiff with the intent to deny her equal protection of the law.

As a result of the hearing, plaintiff was suspended from all classes even though the semester was nearly finished. Plaintiff was also barred from the main campus. Plaintiff did not receive the decision of the hearing until January because the defendant failed to

apply the correct postage and then missent the final decision. Plaintiff was, thus, effectively denied any further administration appeals rights. Plaintiff contends that the defendants' actions were arbitrary and capricious and intentionally discriminatory.

Plaintiff filed her First Amended Complaint on August 25, 1994, alleging various claims. Plaintiff claimed that defendants' actions violated the plaintiff's rights under both the Americans with Disabilities Act and the Rehabilitation Act of 1973. Plaintiff also made claims under 42 U.S.C. § 1983 that defendants' actions violated the plaintiff's rights to substantive and procedural due process and equal protection of the laws, all pursuant to the Fourteenth Amendment of the United States Constitution. Plaintiff further alleged that the defendants' actions constituted a conspiracy to interfere with plaintiff's civil rights in violation of 42 U.S.C. § 1985 (2), and a neglect to prevent conspiracy in violation of 42 U.S.C. § 1986.

On October 18, 1994, the defendants filed an answer to the complaint and a motion to dismiss. The defendants have moved to dismiss the plaintiff's claims under 42 U.S.C. §§ 1983 and 1985,

arguing that the plaintiff has failed to state a claim under these statutes as to the doctrines of sovereign immunity, absolute immunity and qualified immunity bar the plaintiff from any relief.

On November 15, 1994, the plaintiff submitted a response in partial opposition to the defendants' motion to dismiss. In her response, plaintiff stated that she did not object to dismissal of the claims under 42 U.S.C. §§ 1985 and 1986 and the claims under 42 U.S.C. § 1983 against defendants STIM, Dr. Charles Temple, Harry Taylor (in his official capacity only). Plaintiff is correct that, in light of the foregoing, the only disputed issues which remain the subject of the defendants' motion to dismiss are the claims pursuant to 42 U.S.C. § 1983 against defendants Harry and Hugh Lamar in their official capacities.[1]

DISCUSSION

1. Absolute Immunity

Plaintiff's section 1983 claim is based on alleged violations of the plaintiff's rights to equal protection and substantive and procedural due process pursuant to the Fourteenth Amendment. In

their motion to dismiss, the defendants contend that the plaintiff's section 1983 claim against defendant Harry Taylor is barred by the doctrine of absolute immunity. The defendants argue:

> In Watts v. Burkhart, [978 F.2d 269 (6th Cir. 1992)] the Sixth Circuit set forth a test for determining whether or not absolute immunity is appropriate. The three-part test is:
>
> > 1) Whether the Defendant performs traditional adjudicatory functions, free from direct political influence.
> >
> > 2) Whether the Defendant decides sufficiently controversial cases that, in the absence of immunity, would subject him to numerous damages actions; and

---

[1] Defendant Dr. Charles Temple was never named as a defendant in an individual capacity, but only in an official capacity. Defendants Harry Taylor and Hugh Lamar were originally named as defendants in their official and individual capacities.

3) The Defendant adjudicates disputes against a back drop of multiple safeguards to protect the constitutional rights of those under review.

The United States Supreme Court has held that officials seeking absolute immunity bear the burden of showing that such immunity is justified for the function in question. Burns v. Reed, 500 U.S. 478, 486 (1991) (citations omitted). "The presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties. [The Court] has been 'quite sparing' in [its] recognition of absolute immunity and [has] refused to extend it any 'further than its justification would warrant.'" Id. At 486-87 (citations omitted). The Sixth Circuit has reiterated that "the concept of absolute immunity is a relatively limited one and that the Supreme Court developed the separate concept of qualified immunity to apply in most cases involving alleged wrongdoing on the part of public officials." Megenity v. Stenger, 27 F.3d 1120, 1123 (6th Cir. 1994).

Although the defendants cite the three-pronged test of Burkhart in support of their argument, the decision of the Supreme Court in Wood v. Strickland, 420 U.S. 308 (1975) controls the outcome of

this issue. In Wood two public high school students brought suit against members of the local school board and others under 42 U.S.C. § 1983 alleging that their federal constitutional due process rights had been violated. Id. At 309-10. The students had been expelled from school on the grounds that they had violated a school regulation prohibiting the use or possession of intoxicating beverages at school or school activities. Id. at 310. The school board members asserted that they were entitled to absolute immunity from liability under § 1983. Id. at 314. After discussing the doctrine of immunity and the role of school officials in the disciplinary process the Court ruled that the school officials were entitled to qualified rather than absolute immunity. Id. at 322.

> [T]he judgment implicit in [the] common-law development is that absolute immunity would not be justified since it would not sufficiently increase the ability of school officials to exercise their discretion in a forthright manner to warrant the absence of a remedy for students subjected to intentional or otherwise inexcusable deprivations.

Id. at 320.

Numerous cases from the Sixth Circuit and other circuits establish that school officials are entitled only to qualified immunity. See, Hall v. Medical College of Ohio, 742 F.2d 299, 307 (6th Cir. 1983), cert. Denied, 469 U.S. 1113 (1985) (medical student at state university dismissed for academic dishonesty; court held that qualified immunity is available to administrative and faculty personnel at public school) ; Williams by Williams v. Ellington, 936 F2d 881, 885 (6th Cir. 1993) (school officials conducted warrantless strip search of public high school student; court applied doctrine of qualified immunity in determining whether school officials were immune from damages in § 1983 suit for violation of Fourth and Fourteenth Amendments) ; Picozzi v. Sandalow, 623 F. Supp. 1571, 1580 (D.C. Mich. 1986) , aff'd, 827 F.2d 769 (6th Cir. 1987) , cert. Denied, 484 U.S. 1044 (1988) (law school dean conditioned a student's re-enrollment on student taking a polygraph examination to resolve question of student's responsibility for fire in dormitory room; court held dean entitled to protection of qualified immunity) ; Stewart v. Baldwin County Bd. of Educ., 908 F2d 1499, 1508 (11th Cir. 1990) (former school board employee brought § 1983 case alleging that he was terminated for exercising his First Amendment

rights; court held that school officials were entitled to qualified rather than absolute immunity). The court holds that the defendant Harry Taylor is not entitled to the protection of absolute immunity in this case.

1. Qualified Immunity

The defendants argue that Harry Taylor and Hugh Lamar are entitled to qualified immunity. Qualified or "good faith" immunity is an affirmative defense that is available to government officials performing discretionary functions. Rich v. City of Mayfield Heights, 955 F2d 1092, 1094 (6th Cir. 1992) (citing Harlow v. Fitzgerald, 457 U.S. 800, 815 (1982) ; Anderson v. Creighton, 483 U.S. 635, 639 (1987)). The officials are generally shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. at 818; Megenity v. Stenger, supra, 27 F.3d 1120, 1123 (6th Cir. 1994).

> [W]e first look to see if the plaintiff has a clearly established statutory or constitutional right . . . . [I]f it is determined that the plaintiff has not clearly established right on which to

> base his claim, then the plaintiff has failed to state a claim upon which relief can be granted. . . .
>
> However, if a court concludes after making the initial analysis that a defendant is guilty of violating a legal right possessed by the plaintiff, we then look to see whether a reasonable public official would have been aware that his conduct violates the right in question. If we conclude that a reasonable public official would not have been aware that he was committing a violation, we then afford immunity.

Megenity, 27 F.3d at 1124.

To determine what rights are "clearly established" the court must look to decisions from the Supreme Court and from courts within this circuit. Williams by Williams v. Ellington, 936 F2d 881, 885 (6th Cir. 1991) (citing Ohio Civil Service Employees Ass'n v. Seiter, 858 F.2d 1171, 1177 (6th Cir. 1988) ; Dominque v. Telb, 831 F2d 673, 677 (6th Cir. 1987)). The court may also consult decisions from the highest state court in which the case evolved. Ellington, 936 F2d at 885 (citing Eugene D. v. Karman, 889 F.2d 701, 706 n.6 (6th Cir. 1989)). In rare instances, where authority is lacking from these sources, the court may also review decisions of other courts. Ellington, 936 F.2d 885 (6th Cir. 1991).

> [However, for] the decisions of other courts to provide such "clearly established law," these decisions must both point unmistakably to the unconstitutionality of the conduct complained of and

> be so clearly foreshadowed by applicable direct authority as to leave no doubt in the mind of a reasonable office that his conduct, if challenged on constitutional grounds, would be found wanting.

Ohio Civil Service Employees Ass'n v. Seiter, 858 F.2d at 1177.

In their assertion that Harry Taylor and Hugh Lamar are entitled to qualified immunity the defendants argue that:

> Because Plaintiff's case turns on a resolution of a dispute between students, officials of reasonable competence could have differed as to whether or not Plaintiff should have been disciplined for her behavior. Thus, under the federal constitutional, statutory and case law existing at the time of the alleged violation in this case, there was not clearly established constitutional right of the Plaintiff to be free from disciplinary action.

(Defs.' Mem. In Supp. Of Mot. To Dismiss at 9).

Plaintiff contends that defendants Harry Taylor and Hugh Lamar are not entitled to qualified immunity because the rights that plaintiff alleges were violated are clearly established statutory or constitutional rights of which a reasonable person should have known.

> Defendants incorrectly assert in their memorandum that the clearly established right in the "right to be free from discipline." Plaintiff's clearly established rights at issue are the right to equal protection under the law as an individual with a

> disability and the right to procedural and substantive due process as a public school student.

(Pl.'s Mem. In Opp'n to Defs.' Mot. To Dismiss at 6).

a. Equal Protection Claim

In analyzing an equal protection claim the court must first determine the appropriate level of scrutiny to apply to the restriction or classification at issue. Zielasko v. Ohio, 873 F.2d 957, 959 (6th Cir. 1989).

> In most cases distinctions and classifications "need only be drawn in such a manner as to bear some rational relationship to a legitimate state end." Departure from this rational relationship test is permitted "only when the challenged [action] places burdens upon 'suspect classes' of personals or on a constitutional right that is deemed to be 'fundamental.'"

Id. (Quoting Clements v. Fashing, 457 U.S. 957, 963 (1982)). The Supreme Court has stated, in dicta, that the physically disable constitute a nonsuspect class. Frontiero v. Richardson, 411 U.S. 677, 686 (1973) (plurality opinion).

Other courts have also held that disable persons are not a suspect class, and therefore are not entitled to the strict scrutiny equal protection analysis applied to classifications involving race or fundamental rights. See DeVargas v. Mason & Hanger-Silas Mason Co., 844 F2d 714, 725 (10th Cir. 1988) , cert. Denied, 498 U.s. 1074 (1991) ; California Ass'n of Physically Handicapped, Inc. v. FCC,

721 F2d 667, 670 (9th Cir. 1983) , cert. Denied, 469 U.S. 832 (1984); Brown v. Sibley, 650 F.2d 760, 766 (5th Cir. 1981).

Plaintiff claims that passage of the Americans with Disabilities Act ("ADA") reflects congressional intent to classify disabilities as a suspect class for equal protection purposes. The ADA does contain a statement of findings and purposes indicating that the ADA was intended to remedy wide-ranging discrimination against individuals with disabilities. See 42 U.S.C. § 12101. However, the statement of findings and purposes makes no reference to the equal protection clause.

Furthermore, in Davis v. Scherer, 468 U.S. 183, 194 n.12 (1984), the Court indicated that government officials do not "lose their immunity by violating the clear command of a statute or regulation - - of federal or of state law - - unless that statute or regulation provides the basis for the cause of action sued upon." The equal protection clause affords the disabled only the right to be free from government classifications that are not rationally rleated to a legitimate government purpose.

The complaint alleges that the defendants discriminated against plaintiff because of her disability. The complaint specifically

from government classifications that are not rationally rleated to a legitimate government purpose.

The complaint alleges that the defendants discriminated against plaintiff because of her disability. The complaint specifically alleges that the defendants' actions were arbitrary and capricious and constituted intentional discrimination against the plaintiff. (Am. Compl. ¶¶ 42, 43). The complaint thus alleges a classification of the disable without a rational basis. The allegations of the complaint state a violation of plaintiff's clearly established right as a disabled person to equal protection of the laws. Because the complaint alleges a violation of a clearly established right of which a reasonable official would have been aware of, the motion of defendants Taylor and Lamar to dismiss on the basis of qualified immunity is not well taken.[2]

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[2] Of course, the entire qualified immunity issue is subject to be revisited on a motion for summary judgment. Whether there was an arbitrary and capricious decision, or an intentional act based on plaintiff's disability, is not the same issue as whether the disciplinary action was the best judgment.

b. Due Process Claims

i. Procedural Due Process

Plaintiff asserts that her procedural due process rights were violated.[3] First, plaintiff claims that she was summarily suspended without a hearing and in the absence of specific factual findings by the Vice President of Student Affairs, as required by the standards set for in STIM's Disciplinary Procedures. In Goss v. Lopez, 419 U.S. 565, 581 (1975) , the Supreme Court ruled that a suspension of public high school students for ten days is not a violation of procedural due process as long as the student is "given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." However, the Court also stated:

> [T]here are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose presence poses a continuing danger

[3] Although plaintiff has not set forth a property or liberty interest other than stating that she was "a public school student," (Pl.'s Mem. In Opp'n to Defs.' Mot. To Dismiss at 6), the court will assume for purposes of this motion that STIM is a state and/or federally funded institution and that plaintiff has a property interest in her continued enrollment at STIM and/or a liberty interest in maintaining the good reputation of her name.

> to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable . . . .

Id. at 582.

Plaintiff's complaint states that Dean Lamar wrote a memorandum to Judith McCrary, Vice President of Student Services, recommending that plaintiff be expelled. Lamar's memo stated that the plaintiff's behavior "has a perception of being a threat to the safety and welfare of this campus. . . . My job is to provide our students with an environment that is conducive to learning. That has not be the case in the past few weeks." (Am. Compl. ¶ 23). Plaintiff's own complaint notes that Lamar was concerned with the disruption of the academic process. Goss does not require a hearing in this situation; plaintiff has not shown that she had a clearly established constitutional due process right that was violated by her summary suspension.

As for the practices required by STIM's Disciplinary Procedures, the Sixth Circuit has stated that "a violation of internal rules does not establish a cognizable constitutional violation." Hall v. Medical

College of Ohio, 742 F.2d 299, 309 (6th Cir. 1984) (citing Bd. of Curators v. Horowitz, 435 U.S. 78, 92 n.8 (1978)). Defendants are entitled to immunity on this procedural due process claim.

Second, plaintiff claims that she did not receive an immediate hearing regarding the summary suspension; the hearing was held nearly two weeks after her summary suspension. (Plaintiff asserts that this violation was exacerbated by the fact that the semester was coming to an end.) Construing the complaint liberally in favor of the plaintiff (as the court is required to do on a motion to dismiss), the court will assume that the plaintiff did not have "an opportunity to present [her] side of the story," Goss, 419 U.S. at 581, when Dean Lamar approached plaintiff in a "threatening manner" on October 26, 1993. Instead the court will assume that the November 8, 1993 hearing was the first opportunity that plaintiff had to present her side of the story.

Plaintiff does not cite any cases which establish a time frame to follow in situations such as this, where a student has been summarily suspended for "disrupting the academic process." Id. at 582. However, the facts of Goss are of some interest. In Goss several

public high school students were summarily suspended for ten days and in each instance the suspension was given without a hearing, either before or after the suspension. Id. at 584. The Court affirmed the findings of the district court and the court of appeals that the suspensions were invalid because there had been no notice or hearing. Id. The Court held that due process required that in most instances the student be given notice and a hearing before the suspension is imposed, but that where a summary suspension was necessary a "rudimentary hearing should follow as soon as practicable, Id. at 582-83, after the summary suspension. Id. at 581-83. The Goss Court also indicated that, although it was only addressing itself to the question of due process for short suspensions, not exceeding ten days, "[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal proceedings." Id. at 584. Goss did not, however, hold that suspensions of longer than ten days without a hearing violated due process. Moreover, plaintiff has not come forward with any statute or controlling case law that mandates a hearing in any event before the suspension has reached twelve days.

It is not clearly established that in the context of a summary suspension a hearing must be held before that summary suspension turns into a suspension of twelve days or more. In view of the fact that plaintiff's suspension had only reach a period of twelve days by November 8, 1993, the day of the hearing, the court holds that the defendants are entitled to qualified immunity on this second aspect of plaintiff's claim for a violation of her procedural due process rights.

Third, and lastly, plaintiff claims that she did not receive timely notice of the final decision to expel her for a year. The letter did not reach the plaintiff until January 1994, because it was initially returned due to insufficient postage and/or it was "missent." By January the semester was concluded and the plaintiff effectively lost any chance to complete her courses for that semester upon a successful appeal. Plaintiff also claims that this untimely notice effectively denied her her right to appeal to the President of STIM.

Although the Goss Court stated, in dicta, that expulsion of a student might require more formal procedures than notice and a hearing, Goss, 419 U.S. at 584, the plaintiff, again, cites no case in support of her contention that she has a constitutional right to timely

notice of the final decision and to an appeal of the decision. In view of this fact, and the fact that the court itself cannot find any case supporting this contention,[4] the court cannot hold that it is clearly established that plaintiff's due process rights include a right to timely notice of the decision and a right to appeal the decision. Defendants are entitled to immunity on this third procedural due process claim.

ii. Substantive Due Process

Plaintiff asserts that her right to substantive due process was violated by the arbitrary and capricious decision of the defendants which affected her right to continue her studies and her status as a student in good standing.[5] Plaintiff cites no case which recognizes a

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[4] Though nearly every case the court found did allow for some type of appeal, in each instance the appeal was a matter of a state or administrative regulation. The court did not find any case that held that an appeal was a requirement of the constitutional due process.

[5] Again, beyond stating that she is a public school student, plaintiff has not stated what property or liberty interest is at stake. "Protected interests in property are normally 'not created by the Constitution. Rather, they are created and their dimensions are defined' by an independent source such as state statutes or rules entitling the citizen to certain benefits." Goss, 419 U.S. 572-73

substantive due process right to continued enrollment in a tax supported educational institution. However, the court has found a few school disciplinary cases in which courts have entertained claims of a substantive due process violation. In Petrey v. Flaugher, 505 F. Supp. 1087, 1091 (E.D. Ky 1981), the court stated that "[i]f a penalty is so grossly disproportionate to the offense as to be arbitrary in the sense that it has no rational relation to any legitimate end, it may be a violation of equal protection or substantive due process."

Other courts have followed the lead of Petrey in entertaining substantive due process violation claims where a penalty is alleged to have been grossly disproportionate to the offense. See Hart v. Ferris State College, 557 F. Supp. 1379, 1390 (W.D. Mich 1983); Katchak v. Glasgow Independent School System, 690 F. Supp. 580, 583 (W.D. Ky. 1988); Dickens by Dickens v. Johnson Cournty Bd.

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[5] (quoting Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972)). As noted in footnote 3, the court will assume for the purpose of this motion that plaintiff has a property interest in her continued enrollment at STIM and/or a liberty interest in maintaining the good reputation of her name.

of Educ., 661 F. Supp. 155, 158 (E.D. Tenn. 1987).[6]

Despite the fact that these courts have recognized a claim for sutstantive due process in the school disciplinary context, this court feels constrained to hold that it is not clearly established that plaintiff has a substantive due process right to continued enrollment at STIM. In Ewing v. Bd. of Regents, 742 F.2d 913 (6th Cir. 1984), the Sixth Circuit held that a medical student, who had been dismissed from a state university due to academic deficiencies, had a constitutionally protectible property right not to be arbitrarily and capriciously dismissed from the university in violation of the sutstantive due process clause. On appeal, Regents of Univ. of Mich. V. Ewing, 474 U.S. 214, 223 (1985), the Supreme Court did not address the question of whether or not the plaintiff had a constitutionally protectible property right directly, but instead assumed the existence of a constitutionally protectible property right and held that the university had not acted in an aribtrary and capricious manner in dismissing the student.

[6] However, not one of these four courts -- Petrey, Hart, Katchak, or Dickens – found that the penalty was disproportionate enough to be a violation of the substantive due process clause.

The Sixth Circuit, which had found a constitutionally protectible property right in Ewing, has recently observed that the Supreme Court's holding in Ewing casts doubt on the existence of such a right. Megenity v. Stenger, 27 F.3d 1120, 1124 (6th Cir. 1994). Megenity also dealt with a dismissal from a state university on academic grounds. In considering procedural due process claims the Supreme Court has employed a different type of analysis depending on whether the dismissal from school is for academic reasons or for disciplinary reasons. See Bd. of Curators v. Horowitz, 435 U.S. 78, 86 (1978). However, in the context of a substantive due process claim the inquiry is the same whether the plaintiff was dismissed for academic or disciplinary reasons: Does the plaintiff have a right not to be dismissed for arbitrary and capricious reasons? Thus, pursuant to the holding in Megenity, it is not clearly established that plaintiff has a substantive due process right to continued enrollment at STIM.

This holding is supported by the words of the Supreme Court in Wood v. Strickland, 420 U.S. 308, 326 (1975).

> It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. [Students' do have substantive and procedural rights while at school. But § 1983 does

> not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators and school board members, and § 1983 was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion which do not rise to the level of violations of specific constitutional guarantees.

(Citations omitted) (emphasis supplied). Defendants Harry Taylor and Hugh Lamar are entitled to immunity on the plaintiff's substantive due process claim.

Defendants' motion to dismiss is granted in part and denied in part.

Plaintiff's claims under 42 U.S.C. § 1986 are dismissed without prejudice.

Plaintiff's claims under 42 U.S.C. § 1985 are dismissed with prejudice.

Plaintiff's claims under 42 U.S.C. § 1983 against defendants State Technical Institute at Memphis, Dr. Charles Temple, Harry Taylor (in his official capacity), and Hugh Lamar (in his official capacity) are dismissed with prejudice.

Plaintiff's claims under 42 U.S.C. § 1983 against defendants Harry Taylor (in his individual capacity) and Hugh Lamar (in his individual capacity) are dismissed in part. Plaintiff's equal protection claim that the actions were arbitrary and capricious and taken against her because of her disability is not dismissed. Plaintiff's substantive due process claim is dismissed. Plaintiff's procedural due process claim for being summarily suspended without a hearing and in the absence of specific factual findings by the Vice President of Student Affairs is dismissed. Plaintiff's procedural due process claim for not receiving timely notice of the final decision to expel her for a year is dismissed.

Plaintiff's procedural due process claim for not receiving an immediate hearing regarding the summary suspension is dismissed.

IT IS SO ORDERED this 2nd day of May, 1995.

/s/ Jerome Turner
JEROME TURNER
UNITED STATES DISTRICT JUDGE

APPENDIX C

I am stating that Pat Vanderbosh with the red hair strikes me in her appearance as tough, that of a school bully. This is strictly stated due to way and mannerisms in which she carries herself. I have overheard the use of obscenities when she talks to others at times. I have also seen the lab technician, Carlos, ask her to quiet down; she was getting too loud.

I have never seen Particia Vannette Martin start or create any trouble. Particia Martin has never disturbed anyone; in fact, she usually sits alone or by Sako, another student in SQL class. She has never tone out of her way to carry on conversation with anyone, with the exception of asking for help from Sako, a lab technician, or Mrs. Stockett.

/S/ Colleen P Stanhouse
Colleen P. Stanhouse

APPENDIX D

VANDERBOSH'S DEPOSITION

Did you form any belief or opinion as to what you thought might be Ms. Martin's problem?

I just thought she was crazy.

On the phone, when we were talking, you indicated to me that you weren't a psychologist and you weren't sure exactly what might be wrong with her, but you thought that it might be something like paranoid schizophrenia?

After I had had – after all this had happened, there had been a television show that came on and it was about a woman who had exactly the same traits, tendencies, whatever you want to call it, habits that Ms. Martin was exhibiting, but on a more pronounced level: Hearing voices, being told by these voices to do things, people in the family being afraid for their own lives, never knowing whether she is going to hurt them when they come home or if she will even be there. And then, it was a true story about how this woman finally got some help.

And I felt bad then. If felt really bad that I had laughed at Pat Martin and, I said, because this woman fits that same pattern. And I really felt sorry for her.

STATE TECHNICAL INSTITUTE AT MEMPHIS

PHYSICIAN'S CERTIFICATE OF TOTAL DISABILITY

I, Richard O'Donnell, M.D., am a physician practicing in the medical specialty of Internal Medicine. I have examined *(Name of Patient)* Patricia S. Martin, and do hereby certify that he/she suffers from the below-described "**permanent total disability** which totally incapacitates such person from working at an occupation which brings him an income" as defined in T.C.A., Section 49-3251 (below): Patient has frequent neck and shoulder muscle spasm which have to be treated daily. Patient not able to maintain fairly semi-rigid posture for long periods of time.

9/1/93
Date

/s/ Robert D O'Donnell
Physician

Address: 3734 Park Ave.
Memphis, TN